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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1147

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, *Appellant*

v.

THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida Corporation, *Appellee*

JURISDICTIONAL STATEMENT OF APPELLANT

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THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida Corporation, *Appellee*

JURISDICTIONAL STATEMENT OF APPELLANT

(A) OPINIONS BELOW

The opinions below in this case, are as follows:

(i) Order (Opinion) of the Circuit Court of the Fifteenth Judicial Circuit of Florida, in and for Palm Beach County. (Unreported)

(ii) Opinion of the District Court of Appeal of the State of Florida, Fourth District, January Term 1967, Case No. 1098 (Andrews, J.) 195 So. 2d 255,

(Feb. 13, 1967). This is the opinion of the intermediate appellate court. (Petition for rehearing denied without opinion.)

(iii) Opinion of the Supreme Court of Florida, July term A. D. 1967, Case No. 36,313 (Drew, J.) 204 So. 2d 519. This is the opinion supporting the judgment appealed from.

All three opinions are appended to this Jurisdictional Statement.

(B) STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

(i) This was an action brought by Appellee in a Circuit Court in Florida. The relief sought with respect to appellant was two-fold. First, a declaration by the court that appellant tax assessor's refusal to grant a tax exemption to appellee hospital was contrary to the State Constitution and laws, and was wholly void and of no effect. Second, a permanent injunction restraining appellant, as tax assessor, and his successors in office, from placing the hospital property of appellee on the roll of taxable property and ordering appellant to cancel appellee's tax assessment for 1965. Appellee claimed to be entitled to a tax exemption as provided in the Constitution and statutes of Florida because it was a not-for-profit hospital organized as a Florida Corporation. In his answer, appellant pled, as his reason for denying the tax exemption, the following affirmative defense:

"AFFIRMATIVE DEFENSE

"The plaintiff hospital should not be permitted to maintain this suit because to grant the plaintiff exemption from ad valorem taxation as is

sought in this suit would amount to state action which deprives Negro taxpayers and citizens in Palm Beach County, Florida, of their property without due process of law and deprives them of equal protection of the laws, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States. The real and tangible personal property described in the complaint was located in Palm Beach County, Florida, on January 1, 1965, and is subject to ad valorem taxation in Palm Beach County, Florida, for the year, 1965, unless exempt by law. Defendant, EDGAR W. MAXWELL, was on January 1, 1965, and is now the Tax Assessor for Palm Beach County, Florida, i.e., the state officer who was charged with the duty in the first instance of assessing all property in Palm Beach County, Florida, for ad valorem taxation unless exempt by law and granting exemptions from ad valorem taxation to such property as may be exempt by law.

"The plaintiff hospital had on January 1, 1965, has had from the time of its inception, and now has a racial exclusionary policy whereby the plaintiff hospital has at all times material to this cause invidiously and arbitrarily denied admission to patients, solely on the basis of their being members of the Negro race, and denied the use of its hospital facilities to Negro physicians and dentists, solely on the basis of their being members of the Negro race. On January 1, 1965, and at all other times material to this cause, the plaintiff hospital arbitrarily and invidiously denied admission to Negro patients, solely on the basis of their being members of the Negro race, and denied the use of its facilities to Negro physicians and dentists, solely on the basis of their being members of the Negro race. At no time material to this cause has the plaintiff admitted any Negroes as patients or permitted any Negro doctors or dentists to use any of its facilities."

The trial court granted appellee's motion to strike this affirmative defense. Appellant appealed, and the [intermediate] District Court of Appeal, Fourth District, and Supreme Court of Florida [Florida's highest court] each affirmed the action of the trial court in striking the affirmative defense.

In affirming the lower court rulings the highest court of the State of Florida has construed the Constitution and statutes of Florida so as to give them a meaning and effect which is repugnant to the 14th Article of Amendment to the Constitution of the United States.

(ii) The date of the judgment of the Supreme Court of Florida which is sought to be reviewed is November 22, 1967. The date of the denial by the Supreme Court of Florida of the petition for rehearing on said judgment is December 19, 1967.

Because under Florida procedure applicable to this case parts of the record were possessed by three different courts, notices of appeal and requests to certify and transmit the record to this Court were filed with all three courts.

The notice of appeal was filed with the Supreme Court of Florida on the 31st day of January, 1968.

The notice of appeal was filed with the District Court of Appeal, Fourth District, on the 22nd day of January, 1968.

The notice of appeal was filed with the Circuit Court of the Fifteenth Judicial Circuit of Florida in and for Palm Beach County, on the 31st day of January, 1968.

(iii) The statutory provision believed to confer on this Court jurisdiction of the appeal is 28 U.S.C. § 1257(2).

(iv) Cases believed to sustain the jurisdiction:

(a) Since the sole issue in this case and on this appeal is a conflict between the Constitution of the United States on the one hand and state action by, and some statutes and the Constitution of, the State of Florida, as interpreted by the Supreme Court of Florida, on the other, among the cases believed to sustain jurisdiction on this appeal are:

Burton v. *Wilmington Parking Authority,* 365 U.S. 716 (1961)

Garner v. *Louisiana,* 368 U.S. 157 (1961)

Brown v. *Board of Education,* 347 U.S. 483 (1954)

(b) With respect to this Court having jurisdiction at this stage of the proceedings:

Local No. 438 v. *Curry,* 371 U.S. 542 (1963)

Rosenblatt v. *American Cyanamid Company,* 15 L. Ed. 2d, 39 (1965) [Opinion in chambers]

Mercantile National Bank v. *Langdeau,* 371 U.S. 555 (1963)

(v) On their face, the portions of the Constitution of Florida, and statutes of Florida, involved and set forth in the appendix hereto, may appear constitutional. As construed by the Supreme Court of Florida in this case, however, they are invalid and unconstitutional, being in conflict with the 14th Article of Amendment to the Constitution of the United States.

(a) Article IX, Section 1, of the Constitution of Florida

(b) Florida Statute 192.06(13)

(Other constitutional and statutory provisions of the State of Florida, the validity of which is not directly involved but a knowledge of which is important to this jurisdictional statement, are also set forth in the appendix.)

(C) QUESTIONS PRESENTED BY THIS APPEAL

(1) The primary question is:

Can a state, without violating the 14th Article of Amendment to the United States Constitution, grant a tax exemption to a not-for-profit corporation which operates a hospital, and which would otherwise qualify for said exemption, when that hospital will not accept Negroes as patients or allow Negro physicians and dentists to use the facilities of that hospital?

(2) Subsidiary questions include:

(i) Does the county tax assessor in the county where the hospital is located have standing to raise the question set forth above, or can the practice of state subsidization, by way of tax exemption, to a hospital which practices racial segregation, be challenged only by a Negro, as a member of the class discriminated against?

(D) STATEMENT OF THE CASE

Appellant is the Tax Assessor of Palm Beach County, Florida. As such, he is a constitutional officer of the State of Florida. (See Article VIII, Sec. 6, Florida Constitution, Appendix, Page 2a.) It is the duty of appellant to determine what property within his county shall be placed on the tax rolls of said county. (See Florida Statute § 193.11 (Appendix Page 4a); § 192.062, Appendix, Page 3a).

To the extent that appellant does not place property within Palm Beach County on the tax rolls (or, put another way, when appellant grants an exemption from taxation) the tax revenues are decreased. A tax exemption has the same effect, on both the State and the party receiving the exemption, as a subsidy from the state to the exempt party.

Appellee is undoubtedly named after the good Samaritan found in the gospels. The story is familiar. Christ was asked the question, "Who is my neighbor?" In answering, Christ told of a man who fell among thieves and who was left without help by those of his own who saw him, but who was given care and aid by a passing Samaritan. The Samaritan treated all men as his neighbors, and Christ told his questioner to do likewise.

Appellee bears very little resemblance to the good Samaritan of the gospel. It is a hospital which refuses to accept Negroes as patients or Negro physicians on its staff.

Appellant, as tax assessor, and in pursuance of his duties as such, placed appellee on the tax rolls for the year 1965. Appellee filed suit in the appropriate Circuit Court [the trial court] requesting the Court to order appellant to grant a tax exemption to it. Appellant pled an affirmative defense, the text of which is set forth above in full. By this affirmative defense appellant raised the sole issue in this case. (Appellee would otherwise be entitled to the tax exemption. See *Hungerford Convalescent Hospital Asso.* v. *Osborn,* 138 So. 2d 786; 150 So. 2d 230; 151 So. 2d 35.) The affirmative defense was to the effect that:

(1) It is unconstitutional for the state to subsidize by means of a tax exemption an institution which will

not accept patients or staff members solely because of their race.

(2) He, as a tax assessor, an elected constitutional official of the state, could not participate in this unconstitutional act.

The Circuit Court granted appellee's motion to strike the affirmative defense, giving as its only stated reasons:

> "... it appears to the Court, among other things, that [1] the defendant Tax Assessor does not have the capacity to plead the Affirmative Defense herein, and further, [2] it does not appear that said Affirmative Defense is a State action."
>
> [Appendix, page 15a]

Appellant then perfected an interlocutory appeal to the Supreme Court of Florida. The Supreme Court of Florida transferred the case to the District Court of Appeal of Florida, Fourth District, which affirmed the Circuit Court's decision on both grounds. *Maxwell* v. *The Good Samaritan Hospital Association* (Fla. App. 1967), 195 So. 2d 255. [Appendix Page 18a]. Appellant then took certiorari to the Supreme Court of Florida, which (1) granted certiorari, (2) affirmed the decision of the District Court of Appeal. 204 So. 2d 519 [Appendix, Page 19a]. The Supreme Court of Florida then denied appellant's petition for rehearing [Appendix, Page 20a]. In its opinion the Supreme Court of Florida held that appellant's

> "... plea did not controvert the validity of the statute [i.e., of Florida Statute § 192.06(13)] and that denial of the exemption for any other reason than noncompliance with the statute would be an

exercise of power in excess of that granted such officer."

In deciding as it did, the Supreme Court of Florida necessarily held:

(1) that a state may constitutionally subsidize, by means of tax exemptions, institutions practicing racial segregation, because only the criteria of Florida Statute § 192.06(13) may be used by a tax assessor, not the Constitution of the United States.

(2) that the action of appellee [Good Samaritan] in turning away the Negro ill and injured, and Negro physicians, did not constitute "State action" within the meaning of the 14th Amendment, despite the tax exemption subsidy from the State.

In this case, therefore, the highest court of Florida has decided in favor of the validity of a state statute, § 192.06(13), F. S., which, as construed by said court, is repugnant to the Constitution of the United States. It is respectfully submitted, therefore, that an appeal to this Court lies under 28 U.S.C. § 1257(2).[1]

(E) THE FEDERAL QUESTIONS INVOLVED IN THIS APPEAL ARE SUBSTANTIAL

The action of the Florida courts in this case has an adverse effect upon the Constitutional rights of two separate and distinct classes of persons. Appellant acted in his official capacity as a constitutional officer of the State of Florida [Article VIII, Sec. 6, See Appendix, Page 2a] because the State (i.e., the

[1] Should the Court decide, however, that this is not properly an appeal, then, and in that event, appellant respectfully requests this Court to treat this jurisdictional statement as a petition for certiorari.

people of Florida) is adversely affected when a tax exemption is granted to an institution to which it is unconstitutional to grant such an exemption. The State is deprived of tax dollars it otherwise would have. Also, when the State judiciary orders appellant to grant this unconstitutional tax exemption, it is cooperating with appellee to an extent that the acts of racial discrimination on the part of appellee become "state action" within the meaning of the prohibition of the 14th Amendment.

The other class of persons whose constitutional rights are violated by the holdings below are, of course, Negroes.

Appellee's standing to sue, below, is based upon the fact that under the decisions of Florida's own courts he is the party whose right it is to challenge the constitutional validity of the application of Florida's tax exemption statutes. Article VIII, Section 6, Florida Constitution.

> "If a legislative act affects a ministerial officer in the administration of his lawful duties with regard to the *control* and disbursement of public funds, his official capacity gives him such an interest in the matter that he may challenge the validity of the act . . ." (Emphasis by the Court) and "*The necessity of protecting the public funds is of paramount importance,* and the rule denying to ministerial officers the right to question the validity of the act must give way to a matter of more urgent and vital public concern." (Emphasis by the Court.) *Green* v. *City of Pensacola,* 108 So. 2d 897 (1st D.C.A. 1959)

See also *Kaulakis* v. *Boyd,* 138 So. 2d 505 (Fla 1962); *State ex rel. Harrell* v. *Cone,* 130 Fla. 158, 177 So.

854 (1937), in which the court permitted the comptroller, like the appellee a constitutional officer of the state, to challenge the validity of a statute which called for the disbursement of public funds.

In the present case the District Court of Appeal, whose ruling was adopted and quoted by the Florida Supreme Court, held that appellee as tax assessor "has no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute." The only "additional restriction" appellee sought to impose was that controlling restriction found in the 14th Amendment to the United States Constitution.

The tax assessor, for reasons set forth below, could not constitutionally grant a tax exemption to appellant. Since he is the one whose duty it is to grant or withhold such tax exemption, surely he has standing to raise the point he did in his stricken affirmative defense, and to appeal the erroneous ruling on that point right to the highest court of the land. It just cannot be the law that he has no standing to appeal to this Court a ruling which will force him, as a state officer, to violate the United States Constitution.

The federal questions involved, therefore, are substantial in the manner in which they affect Florida taxpayers and the tax assessor who brought this action; also in the manner in which they affect Negro citizens.

This brings us to a substantial federal question indeed, the primary question presented by this appeal, namely:

> "Can a state, without violating the 14th Article of Amendment to the United States Constitution, grant a tax exemption to a not-for-profit corpo-

> ration which operates a hospital, and which would otherwise qualify for said exemption, when that hospital will not accept Negroes as patients or allow Negro physicians and dentists to use the facilities of that hospital?"

If it is "state action" which turns Negro patients and physicians away from the Good Samaritan, then clearly the turning away of those Negroes is contrary to the 14th Amendment. This Court has so held as early as 1875. "The Fourteenth Amendment prohibits a state from denying to any person within its jurisdiction the equal protection of the laws;" *United States* v. *Cruikshank,* 92 U.S. 542 (1876).

> "It [the 14th Amendment] nullifies and makes void all state legislation, *and state actions of every kind,* which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, *or which denies to any of them the equal protection of the laws." The Civil Rights Cases,* 109 U.S. 3 (1883) (Emphasis added.)

Appellee and the courts below, in striking the affirmative defense, take the position that the action of the Good Samaritan Hospital is not "state action." It becomes "state action," however, when the hospital is being partially financed by the state by means of a tax exemption. As stated by Chief Judge Bazelon in a dissenting opinion in *Williams* v. *Hot Shoppes,* 293 F 2d 835 (D.C. Cir. 1961):

> "In determining the scope of the Fourteenth Amendment . . . the bare rubric that it applies only to 'state action' as opposed to 'private conduct' is, without more, of little aid. A state can act only through human representatives, and unless

> the prohibitions of the Amendment . . . apply to these representatives, they are without meaning. Ex Parte Virginia, 1879, 100 U.S. 399, 347."

It is, in fact, well settled that institutions which are not official state agencies can take "state action" as prohibited by the 14th Amendment. A bus driver can act for the state. *Flemming* v. *South Carolina Electric and Gas Co.*, 224 F 2d 752 (4th Cir. 1955). A privately owned terminal building can act for the state. *Baldwin* v. *Morgan,* 251 F 2d 780 (5th Cir. 1958) 287 F 2d 750 (5th Cir. 1961); a company town may act for the state, *Marsh* v. *Alabama,* 326 U.S. 501 (1946); trustees of a private park may act for the state, *Evans* v. *Newton,* 382 U.S. 296 (1966); the operators of a "private" golf course may act for the state, *Hampton* v. *City of Jacksonville,* 304 F 2d 320 (5th Cir. 1962); a private detective may act for the state, *Williams* v. *United States,* 341 U.S. 97 (1951); an amusement park may act for the state, *Valle* v. *Stengel,* 176 F 2d 697 (3rd Cir. 1949); a "private" political club may act for the state, *Terry* v. *Adams,* 345 U.S. 461 (1953). It is respectfully submitted that a "private" [Good Samaritan] hospital may also act for the state, that indeed its actions in spurning Negroes are state actions within the meaning of the 14th Amendment prohibitions when that hospital is subsidized by state tax exemptions.

State action can be involved even when the action taken violates a law of the state. *Screws* v. *United States,* 325 U.S. 91 (1945); *Monroe* v. *Pape,* 365 U.S. 167 (1961).

To the knowledge of appellant this Court has never decided the precise question presented by this appeal. It has, however, decided to hear many cases in addi-

tion to those already cited, in which the question of what constitutes state action was central. It is not the intention of appellant in this jurisdictional statement to analyze these cases, as would be proper in a brief on the merits. To show that this Court has treated quite similar questions as questions of substance within the meaning of Rule 15(1)(e) of the Rules of this Court and worthy of decision by this Court, appellant does refer the Court to the following additional cases.

Cases similar in principle to the instant case are *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961); *Barrows* v. *Jackson*, 346 U.S. 249 (1953); and *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (4th Cir. 1963).

In *Burton* a privately owned restaurant was located in a building owned by an instrumentality of the State of Delaware. In that case this Court spoke of "the nonobvious involvement of the State in private conduct" and held that the restaurant was closely enough connected with the state so that its refusal to serve Negroes violated the 14th Amendment. A similar case is *Derrington* v. *Plummer*, 240 F. 2d 922 (5th Cir. 1957). It is doubtful that the connection which existed between the restaurant and the State of Delaware in *Burton* was closer than the relationship between appellee and the State of Florida which was subsidizing it through tax exemptions.

In *Barrows*, supra, as in *Shelley* v. *Kraemer*, 334 U.S. 1, (1948) this Court held that a state judiciary can not aid one practicing racial segregation through enforcement of restrictive covenants. It would seem to follow logically that neither can a state tax assessor aid

one practicing racial segregation through the granting of a tax exemption.

Simpkins supra, admittedly involved Hill-Burton funds, an element not present in the instant case. In *Simkins* the Court stated, in connection with *Burton* v. *Wilmington Parking Authority,* supra, that (pp. 968, 969) "The Supreme Court's language and holding is not to be limited to cases involving lessees of public property." The Court, in *Simkins,* further placed reliance on the fact that the hospital involved was receiving funds through Hill-Burton in finding "the requisite 'state action.'" In the present case, Good Samaritan Hospital is also receiving state financial aid,—in the form of a tax exemption.

There are two other important, substantial federal questions involved on this appeal, which are contained within the more general questions set forth in Section (c) above:

(1) Can an institution licensed by the state practice racial segregation? Mr. Justice Douglas has said it cannot in *Garner* v. *Louisiana,* 368 U.S. 157 (1961).

(2) In view of the fact that non-profit hospitals relieve the state of the burden of maintaining its own hospitals—hospitals obviously being instrumentalities necessary for the common good—may such hospitals constitutionally practice racial segregation? See *Eaton* v. *Grubbs,* 329 F. 2d 710 (4th Cir. 1964) and, involving a public utility rather than a hospital (both are necessary for the common good) *Baldwin* v. *Morgan,* 251 F. 2d 780 (5th Cir. 1958) and 287 F. 2d 750 (5th Cir. 1961), especially the second opinion, in which the Court said:

> "We pointed out at some length in *Boman* v. *Birmingham Transit Company,* 5 Cir. 1960, 280

> F. 2d 531, 535, one engaged in Alabama as a public utility 'is doing something the state deems useful for the public necessity or convenience.' "

A hospital also "is doing something the State deems useful for the public necessity or convenience." Can such an instrumentality practice racial segregation? This, too, is surely a substantial federal question and one which, along with the other questions discussed above, appellee hopes to be able to explore fully with this Court in briefs on the merits.

Respectfully submitted,

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APPENDIX

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FLORIDA CONSTITUTION
Article IX Section 1

Section 1. Uniform and equal rate of taxation; special rates.—The legislature shall provide for a uniform and equal rate of taxation, except that it may provide for special rate or rates on intangible property, but such special rate or rates shall not exceed two mills on the dollar of assessed valuation of such intangible property; provided, that as to any obligations secured by mortgage, deed of trust, or other lien, the Legislature may prescribe an intangible tax of not more than two (2) mills on the dollar, which shall be payable at the time such mortgage, deed of trust, or other lien is presented for recordation, said tax to be in lieu of all other intangible assessments on such obligations. The special rate or rates, or the taxes collected therefrom, may be apportioned by the Legislature, and shall be exclusive of all other State, County, District and municipal taxes; and shall prescribe such regulations as shall secure a just valuation of all property as may be exempted by law for municipal, education, literary, scientific, religious or charitable purposes.

FLORIDA STATUTE 192.06(13) Property Exempt from Taxation.—The Following Property Shall Be Exempt From Taxation:

(13) All property, real and personal, of any hospital, licensed by the state board of health, owned and operated by a Florida corporation not for profit, which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital, and used by such hospital for hospital purposes, including but not limited to housing for nurses, interns and other hospital personnel, laboratories, laundries, parking lots, auditoriums, lecture halls, animal houses, pharmacies and other hospital uses; provided that all income of such hospital remaining after payment of the usual and necessary

expenses of operation, including the payment of liens and encumbrances upon its property, shall be used exclusively for educational, charitable, or scientific purposes, including the maintenance, improvement or expansion of its facilities.

FLORIDA CONSTITUTION
Art. VIII Sec. 6

Section 6. Election of County officers; terms—The Legislature shall provide for the election by the qualified electors in each County of the following County Officers: A Clerk of the Circuit Court, a Sheriff, Constables, a County Assessor of Taxes, a tax collector, a Superintendent of Public Instruction and a County Surveyor. The term of office of all county officers mentioned in this Section shall be for four years, except that of County Assessor of Taxes and County Tax Collector, who shall be elected for two years at the general election to be held in the year A.D. 1918, when and after which they shall be elected for a term of four years. Their powers, duties and compensation shall be prescribed by law. The Legislature shall provide by law for the care and custody of all County funds and shall provide the method of reporting and paying out all such funds. Provided, County Treasurers elected in General Election held in 1914 shall hold office for the term elected.

FLORIDA STATUTE 192.062 Annual Application Required for Exemption.—

Every person or organization who has the legal title to real or personal property which is entitled by law to exemption from taxation as a result of its ownership and use, except property owned and used exclusively for governmental purposes or religious purposes, shall before April 1 of each year file an application for exemption with the county tax assessor listing and describing the property for which exemption is claimed and certifying its ownership and use. The comptroller shall prescribe the forms upon which the application is made.

FLORIDA STATUTE 193.021 Method of assessment of property.—The county assessor of taxes of the several counties shall assess all the real and personal property in said counties in such a manner as to secure a just valuation as required by § 1, Art. IX of the state constitution. In arriving at a just valuation, the County assessor of taxes of the several counties shall take into consideration the following factors:

(1) The present cash value of the property;

(2) The highest and best use to which the property can be expected to be put in the immediate future; and the present use of the property;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property.

FLORIDA STATUTE 192.06(3) Property exempt from taxation.—The following property shall be exempt from taxation:

(3) Such property of educational, literary, benevolent, fraternal, charitable and scientific institutions within this state, as shall actually be occupied and used by them for the purpose for which they have been or may be organized, provided, not more than seventy-five per cent of the floor space of said building or property is rented, and the rents, issues, and profits of said property are used for the educational, literary, benevolent, fraternal, charitable or scientific purposes of said institutions; provided, further, that the above stated limitation against the rental of more than seventy-five per cent of the floor space of any such building or property shall not apply to apartments, rooms or beds rented, or available for rent, to patients in any

hospital or to residents in any home for the aged, if such hospital or home for the aged is licensed by the state board of health, operated by a Florida corporation, not for profit, which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital or home for the aged, if all of such income, remaining after payment of the usual and necessary expenses of operating such hospital or home for the aged, including the payment of liens and encumbrances upon the property of such corporation, shall be used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement or expansion of the facilities of such hospital or home for the aged; provided further that nothing in this subsection shall be construed as applying to special assessment by municipalities for sidewalks, curbing, street paving or other local improvements. Provided further, that educational institutions as used in this chapter shall mean state tax supported, parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for eligibility to, certification by, accreditation to or membership in the southern association of colleges and secondary schools, state department of education or the Florida Council of independent schools. This section shall not apply to property owned by testamentary charitable trusts in counties having a population of not less than one hundred twelve thousand nor more than one hundred seventy thousand according to the latest official decennial census.

FLORIDA STATUTE 193.11 Assessment of real and personal property;

(1) Between January and July 1 in each year, the county assessor of taxes in each county, with the aid of such assistant assessors of taxes as may be appointed by the county assessor of taxes, shall ascertain by diligent

inquiry the names of all taxable persons in his county, and also all of their taxable personal property, and all taxable real estate therein, as of January 1 of such year, and shall make out an assessment roll of all such taxable property. And the county assessor of taxes or his assistants may make at least one visit to each precinct for the purpose of receiving tax returns after having given ten days notice, by publication in a newspaper of such visit, if there be a newspaper published in the County, between January 1 and March 1. Tax returns by owners or agents must be made between January 1 and April 1. The county assessor of taxes shall assess all property on the basis provided in § 193.021. The assessment of tangible personal property shall be made separate from the assessment of real estate.

[Filed December 7, 1965]

IN THE CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT,
PALM BEACH COUNTY, FLORIDA.
IN CHANCERY. NO. 65 C 2350-B

THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC.,
a non-profit Florida corporation, *Plaintiff*,

v.

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida; STETSON O. SPROUL, as Tax Collector of Palm Beach County, Florida; and FRED O. DICKINSON, JR., as Comptroller of the State of Florida, *Defendants.*

Complaint

The Plaintiff, THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., by its undersigned counsel, sues EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, STETSON

O. SPROUL, as Tax Collector of Palm Beach County, Florida, and FRED O. DICKINSON, JR., as Comptroller of the State of Florida, as follows:

1. Plaintiff is a corporation not for profit, organized and existing under the laws of the State of Florida by order of the Circuit Court entered November 23, 1916, and its original charter is recorded in the office of the Clerk of the Circuit Court in and for Palm Beach County in Minutes Circuit Book No. 7, page 243. Its principal office is situated in West Palm Beach, Palm Beach County, Florida. Plaintiff is a hospital, licensed by the State Board of Health, and is and has been exempt from the payment of taxes to the United States upon the income derived from its operations.

2. Defendant EDGAR W. MAXWELL is the duly elected, qualified and acting Tax Assessor of Palm Beach County, Florida. Defendant STETSON O. SPROUL is the duly elected, qualified and acting Tax Collector of Palm Beach County, Florida. Defendant FRED O. DICKINSON, JR. is the duly elected, qualified and acting Comptroller of the State of Florida.

3. Plaintiff is the owner of real property in West Palm Beach, Palm Beach County, Florida, described as follows:

15-43-43, S 342.56 FT OF N 837.56 FT OF GOV LT 6 & TR LYG ELY THEREOF & WLY OF CITY OF WPB BULKHEAD LINE / LESS FLAGLER DR R/W RELOCATED/.

GRUBER CARLBERG ADD E ½ of LT 9 & LTS 10 to 13 INC BLK 2.

GRUBER CARLBERG ADD. LOTS 9 to 13 INC/ LESS S 30 FT/ BLK 1. LTS 1 & 2 / LESS S 30 FT/ BLK 6. TH PT OF OLIVE AVE LYG N OF 12TH

ST & BET BLKS 1 & 6. TH PT OF 13.5 FT ALLEY LYG N OF & BET NLY EXTENSION OF W LINE OF LT 9 BLK 1 & E LINE OF LT 1 BLK 6 & TR LYG BET N LINE OF GRUBER-CARLBERG & S LINE OF BLK 6/LESS S 30 FT/ EXTENDED ELY TO CITY OF WPB BULKHEAD LINE /LESS R/W FLAGLER DR RELOCATED & LESS TR AS IN ORB 989 P 450.

Also described as follows:

E½ of Lot 9, and all of Lots 10 to 13 inclusive, Block 2, Gruber Carlberg Addition, an addition to the City of West Palm Beach, Florida, according to the plat thereof filed in Plat Book 7, page 63, Public Records of Palm Beach County.

Property in Government Lot 6 of Section 15, Township 43 South, Range 43 East, bounded on the west by the east right of way line of North Dixie Highway, bounded on the east by the shores of Lake Worth, bounded on the North by the south line of property owned by Bert F. Hiscock, bounded on the South by the north boundary of the Gruber Carlberg Addition, as in Plat Book 7, page 63, subject to the easement of North Flagler Drive.

Lots 9, 10, 11, 12 and 13, Block 1, Gruber Carlberg Addition, an addition to the City of West Palm Beach, Florida, according to the plat thereof filed in Plat Book 7, page 63.

Lots 1 and 2, Block 6, Gruber Carlberg Addition, an addition to the City of West Palm Beach, Florida, according to the plat thereof filed in Plat Book 7, page 63; together with the extension of these lots eastward to the shores of Lake Worth.

The north end of the right of way of North Olive east of Lots 12 and 13, Block 1, Gruber Carlberg Addition, and west of Lots 1 and 2, Block 6, Gruber Carlberg Addition, and the right of way of an alley north of Lots 9, 10, 11, 12 and 13, Block 1, and Lots 1 and 2, Block 6, Gruber Carlberg Addition, as abandoned by the City of West Palm Beach by Ordinance 680.

including the personal property and hospital equipment situated thereon. A substantial portion of the real property has been owned by the Plaintiff since the year 1917.

4. All of the above described property, real and personal, of the Plaintiff, is occupied and used by the Plaintiff for hospital purposes, as defined by Florida Statutes Section 192.06, (13); and all income from the operation of the hospital, remaining after payment of the usual and necessary expenses of operation is used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement and expansion of the hospital facilities. Plaintiff is a hospital entitled to tax exemption, as a benevolent and charitable institution, devoted to benevolent and charitable purposes, under the Constitution and Statutes of the State of Florida, and has been so exempt by the Tax Assessor on its property, real and personal, for all years prior to 1965 since its existence, with the exception of part of the real property being used for housing for nurses, and other hospital personnel, which was assessed by the Tax Assessor for the years 1962 and 1963, which tax assessments are now the subject of litigation brought by the Plaintiff in this Court. (See *Maxwell* v. *Good Samaritan Hospital Association*, 161 So. 2d 31, affirming this Court; *Maxwell* v. *Good Samaritan Hospital Association*, 166 So. 2d 151, Cert. denied by Supreme Court; and *Maxwell* v. *Good Samaritan Hospital Association*, Second Appeal, affirming this Court, Mandate issued December 3,

1965.) The Plaintiff is also engaged in the educational and scientific fields, including the education and training of nurses, medical interns, and continuing education for physicians and medical scientific research.

5. The hospital owned and operated by Plaintiff is a modern hospital for the care of the ill, including all of the necessary component parts of a first class hospital, with the most advanced facilities. All patients receive equal treatment without regard to ability to pay. No patient needing hospital facilities or services is denied the same because of inability to pay; and in the services rendered, and in the use of accommodations provided, no distinction is made between those patients who are able to pay and those who are not. Out-patient clinics for heart patients and others are maintained where all patients are treated for no charge. The Plaintiff treats charity patients at a cost to the hospital in excess of $100,000.00 annually. In addition, the hospital absorbs costs for treatment of patients billed for services from whom the hospital is unable to collect, because of inability of the patients to pay, which costs likewise exceed $100,000.00 annually.

6. The property of the Plaintiff, real and personal, at all times pertinent to the maintenance of this suit, is and has been exempt from ad valorem and other taxes under Article IX, Section 1, of the Constitution of the State of Florida, and other applicable provisions thereof, and under the provisions of Florida Statutes, Section 192.06 (3)(13), and other applicable provisions thereof.

7. The Defendant EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, has arbitrarily placed said property on the tax rolls for the County of Palm Beach for

the calendar year 1965, resulting in taxes being assessed and levied thereon as follows:

Description	Tax Value	Amount of Tax
15-43-43. S 342.56 FT OF N 837.56 FT OF GOV LOT 6 & TR LYG ELY THEREOF & WLY OF CITY OF WPB BULKHEAD LINE/LESS FLAGLER DR R/W RELOCATED/	$3,677,840.00	$49,864.15
GRUBER CARLBERG ADD. E ½ of LT 9 & LOTS 10 TO 13 INC BLK 2	$ 255,670.00	$ 3,466.37
GRUBER CARLBERG ADD. LOTS 9 TO 13 INC/ LESS S 30 FT/ BLK 1. LTS 1 & 2 / LESS S 30 FT /BLK 6. TH PT OF OLIVE AVE LYG N OF 12TH ST & BET BLKS 1 & 6. TH PT OF 13.5 FT ALLEY LYG N OF & BET NLY EXTENSION OF W LINE OF LT 9 BLK 1 & E LINE OF LT 1 BLK 6 & TR LYG BET N LINE OF GRUBER-CARLBERG & S LINE OF BLK 6 /LESS S 30 FT /EXTENDED ELY TO CITY OF WPB BULKHEAD LINE /LESS R/W FLAGLER DR RELOCATED & LESS TR AS IN ORB 989 P 450	$ 62,670.00	$ 849.68
TANGIBLE PERSONAL PROPERTY	$ 500,000.00	$ 7,456.90
TOTALS:	$4,496,180.00	$61,637.10

8. The above described assessment and levy of taxes for the calendar year 1965 are wholly unconstitutional and void under the Constitution and Statutes of the State of Florida.

9. Plaintiff did before April 1, 1965 file an application for exemption of the above described property with the County Tax Assessor, listing and describing the property for which exemption is claimed and certifying its ownership and use on forms prescribed by the Defendant Comptroller in compliance with Florida Statutes, Section 192.062.

10. Plaintiff's constitutional rights and property can only be protected by enjoining the Defendant, STETSON O. SPROUL as Tax Collector of Palm Beach County, Florida, from collecting said taxes for the year 1965, and enjoining and restraining Defendant EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, from levying tax assessments upon said property and cancelling said assessments from the tax roll for 1965.

WHEREFORE, Plaintiff prays as follows:

1. The Court take jurisdiction of the subject matter hereof and the parties hereto.

2. The Court find, determine and declare that the levy and assessment of real and personal property taxes for the calendar year 1965 on the Plaintiff's real and personal property, above described, is unconstitutional, wholly void, and of no effect.

3. The Court permanently enjoin and restrain Defendant STETSON O. SPROUL and his successors in office, as Tax Collector of Palm Beach County, Florida, from collecting or attempting to collect the aforesaid real and personal property taxes levied and assessed upon the Plaintiff's real and personal property for the calendar year 1965.

4. The Court permanently enjoin and restrain Defendant EDGAR W. MAXWELL and his successors in office, as Tax Assessor of Palm Beach County, Florida, from placing

the above described property of Plaintiff on the roll of taxable property in and for the County of Palm Beach, and order him to cancel the assessment for 1965.

5. The Court grant to Plaintiff such other and further relief as the Court may, in equity, find Plaintiff entitled.

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Palm Beach, Florida 33482

Attorneys for Plaintiff

Answer—Defendant, Edgar W. Maxwell, as Tax Assessor for Palm Beach County, Florida

Defendant, EDGAR W. MAXWELL, as Tax Assessor for Palm Beach County, Florida, for answer to the complaint says:

1. He admits all of the allegations contained in Paragraph 2 of the complaint.

2. He denies all of the allegations contained in Paragraphs 1, 3, 4, 5, 6, 7, 8, 9 and 10 of the complaint.

3. He denies each and every other allegation, statement and averment contained in the complaint not hereinabove specifically admitted or denied.

He interposes the following affirmative defense:

Affirmative Defense

The plaintiff hospital should not be permitted to maintain this suit because to grant the\plaintiff exemption from ad valorem taxation as is sought in this suit would amount to state action which deprives Negro taxpayers and citizens in Palm Beach County, Florida, of their property without due process of law and deprives them of equal protection of the laws, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States. The real and tangible personal property described in the complaint was located in Palm Beach County, Florida, on January 1, 1965, and is subject to ad valorem taxation in Palm Beach County, Florida, for the year, 1965, unless exempt by law. Defendant, Edgar W. Maxwell, was on January 1, 1965, and is now the Tax Assessor for Palm Beach County, Florida, i.e., the state officer who was charged with the duty in the first instance of assessing all property in Palm Beach County, Florida, for ad valorem taxation unless exempt by law and granting exemptions from ad valorem taxation to such property as may be exempt by law.

The plaintiff hospital had on January 1, 1965, has had from the time of its inception, and now has a racial exclusionary policy whereby the plaintiff hospital has at all times material to this cause invidiously and arbitrarily denied admission to patients, solely on the basis of their being members of the Negro race, and denied the use of its hospital facilities to Negro physicians and dentists, solely on the basis of their being members of the Negro race. On January 1, 1965, and at all other times material to this cause, the plaintiff hospital arbitrarily and invidiously denied admission to Negro patients, solely on the basis of their being members of the Negro race, and denied the use of its facilities to Negro physicians and dentists, solely on the basis of their being members of the Negro race. At no time material to this cause has the plaintiff admitted any

Negroes as patients or permitted any Negro doctors or dentists to use any of its facilities.

SALES AND HOUSTON
Attorneys for Defendant Maxwell

By _____

908 Comeau Building
West Palm Beach, Florida

Motion To Strike

The Plaintiff, THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., by its undersigned counsel, moves to strike the affirmative defense contained in the Answer of the Defendant EDGAR W. MAXWELL as Tax Assessor of Palm Beach County, Florida, for the reason that the same constitutes an insufficient defense.

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324 Royal Palm Way
Palm Beach, Florida

s/ MADISON F. PACETTI
Attorneys for Plaintiff

Motion To Require Plaintiff To Reply to Affirmative Defense—Defendant, Edgar W. Maxwell

Defendant, EDGAR W. MAXWELL, as Tax Assessor for Palm Beach County, Florida, moves the Court to enter its order requiring the plaintiff to reply to his affirmative defense interposed in his answer, served February 1, 1966, upon the ground that this defense is a valid defense which, if sustained, would be dispositive of this cause and constitutes a complete bar to the plaintiff's right to bring or maintaining this suit.

SALES AND HOUSTON
Attorneys for Defendant Maxwell

By _____

908 Comeau Building
West Palm Beach, Florida

Order

This cause coming before the Court on petition to intervene of the Florida Hospital Association and motion of the plaintiff to strike the Affirmative Defense of the defendant Tax Assessor, and the same being duly considered, it appears to the Court, among other things, that the defendant Tax Assessor does not have the capacity to plead the Affirmative Defense herein and, further, it does not appear that said Affirmative Defense is a State action. It is thereupon

ORDERED that said petition to intervene is granted and that said motion to strike said Affirmative Defense is granted. By way of dicta it might be pointed out that the question sought to be raised in said Affirmative Defense may be moot by reason of the plaintiff's recent public declaration on the subject.

Copy furnished counsel.

DONE AND ORDERED this May 13, 1966.

R. O. MORROW
Circuit Judge

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JANUARY TERM 1967

CASE NO. 1098.

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, *Appellant*,

v.

THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida corporation, et al., *Appellees*.

Opinion filed February 13, 1967.

Interlocutory appeal from the Circuit Court for Palm Beach County; R. O. Morrow, Judge.

Ronald Sales, West Palm Beach, for appellant.

Chester Bedell of Bedell Bedell Dittmar & Smith, Jacksonville; Madison F. Pacetti of Caldwell Pacetti & Barrow, Palm Beach; Charles H. Warwick, III, of Warwick Paul & Herring, West Palm Beach; for appellee-hospital.

ANDREWS, J.

Opinion

This is an interlocutory appeal by the defendant, Edgar W. Maxwell, as Tax Assessor of Palm Beach County, Florida, from an order granting Plaintiff-Good Samaritan Hospital's motion to strike the affirmative defenses of the defendant. This appeal was originally filed in the Supreme Court and by order of said court was transferred to this court.

The complaint sets forth that Good Samaritan Hospital Association, Inc., is a corporation not for profit organized

under the laws of Florida. It is licensed by the State Board of Health, is exempt from the payment of taxes to the United States upon income derived from its operation and has met all requirements entitling it to exemption from real and personal property taxes under the provisions of F.S.A. § 192.06(13).

In 1965 the defendant, as tax assessor, assessed taxes on the real and personal property of Good Samaritan in the amount of $61,337.10, thereby declining to recognize Good Samaritan's application for exemption from such taxes duly filed in accordance with F.S.A. § 192.062.

Defendant-Maxwell filed his answer and by affirmative defenses alleged that Good Samaritan was not entitled to its exemption in that it denied admission to negro patients and denied the use of its facilities to negro physicians and dentists solely on the basis of race.

The tax assessor of each county is an officer of the state and, as such, is obligated to carry out the provisions of the state law setting forth his duties and responsibilities. State ex rel. Peacock v. Latham, 1936, 125 Fla. 793, 805, 170 So. 475, 479. Numberous classes of property owned by certain classes of persons and corporations are exempt from ad valorem real and property taxes under the provisions of F.S.A. § 192.06. The persons and corporations set forth therein, upon complying with the provisions of F.S.A. § 192.062, are entitled to the exemption as granted by the legislature under the authority of Article IX, Section 1, of the Florida Constitution.

The tax assessor has no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute. The denial of the exemption to the plaintiff for any reason not authorized by the Florida Constitution and laws of the state is an exercise of power in excess of that granted such officer. State ex rel. Peacock v. Latham, supra.

The action of the tax assessor in denying the exemption to the hospital is not comparable to the position of the

comptroller in Green v. City of Pensacola, Fla.App. 1959, 108 So.2d 897. There the comptroller was confronted with two statutes which were in direct conflict, and the court was properly called upon to determine which statute was controlling.

The affirmative defense of the tax assessor attempts to plead individual civil rights under the Constitution of the United States. Only persons actually deprived of their individual civil rights can seek redress of such rights. Bailey v. Patterson, 1962, 369 U.S. 31, 82 S.Ct. 549, 7 L.Ed.2d 512; Brown v. Board of Trustees of LaGrange Independent School Dist., 5 C.A. 1951, 187 F.2d 20; United States v. Biloxi Municipal School District, D.C.S.D.Miss. 1963, 219 F.Supp. 691 (affirmed, 5 C.A. 1964, 326 F.2d 237).

Affirmed.

WALDEN, C. J., and SMITH, D. C., Associate Judge, Concur.

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1967
FRIDAY, MAY 19, 1967

CASE No. 36,313

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, *Petitioner*,

v.

THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida corporation, *Respondent*.

Order Allowing Certiorari

The Petition herein for a Writ of Certiorari to the District Court of Appeal, Fourth District of Florida, is granted.

It is further ordered that said cause be set down for oral argument at 9:30 o'clock A. M., Wednesday, Septem-

ber 6, 1967, with not exceeding thirty minutes to the side by attorneys for the parties. The time for filing briefs on the merits is set forth in Rule 4.5 c (6), F.A.R.

A True Copy

Test:
Sid J. White
Sid J. White
Clerk Supreme Court.

Opinion

Drew, J.

Petition for writ of certiorari has been granted to review the decision of the district court in this cause, 195 So. 2d 255, as one which affects a class of state officers.[1] The court affirmed an order striking affirmative defenses filed by the petitioner tax assessor in an action by the respondent hospital to compel tax exemption and cancellation of its assessment under Sec. 192.06(13), F.S.[2]

Upon pleadings detailed in the opinion above cited, the district court held that the defendant assessor could not

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[1] Art. V, Sec. 4, Fla. Const.

[2] "(13) All property, real and personal, of any hospital, licensed by the state board of health, owned and operated by a Florida corporation not for profit, which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital, and used by such hospital for purposes, including but not limited to housing for nurses, interns and other hospital personnel, laboratories, laundries, parking lots, auditoriums, lecture halls, animal houses, pharmacies and other hospital uses; provided that all income of such hospital, remaining after payment of the usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, shall be used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement or expansion of its facilities."

plead the alleged discriminatory admission policies as a bar to tax exemption because, as tax assessor, he "has no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute."[3] The court correctly concluded that defendant's plea did not controvert the validity of the statute, and that denial of the exemption for any reason other than noncompliance with the statute would be an exercise of power in excess of that granted such officer.

We find no error in the decision and the writ is accordingly discharged.

CALDWELL, C.J., THORNAL and ERVIN, JJ., and WHITE, Circuit Judge (Retired), concur

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Order

(Tuesday, December 19, A. D. 1967)

On consideration of the Petition for Rehearing filed by Attorney for Petitioner,

IT IS ORDERED by the Court that said petition be, and the same is hereby, denied.

A TRUE COPY,

TEST:
SID J. WHITE
Sid J. White
Clerk Supreme Court.

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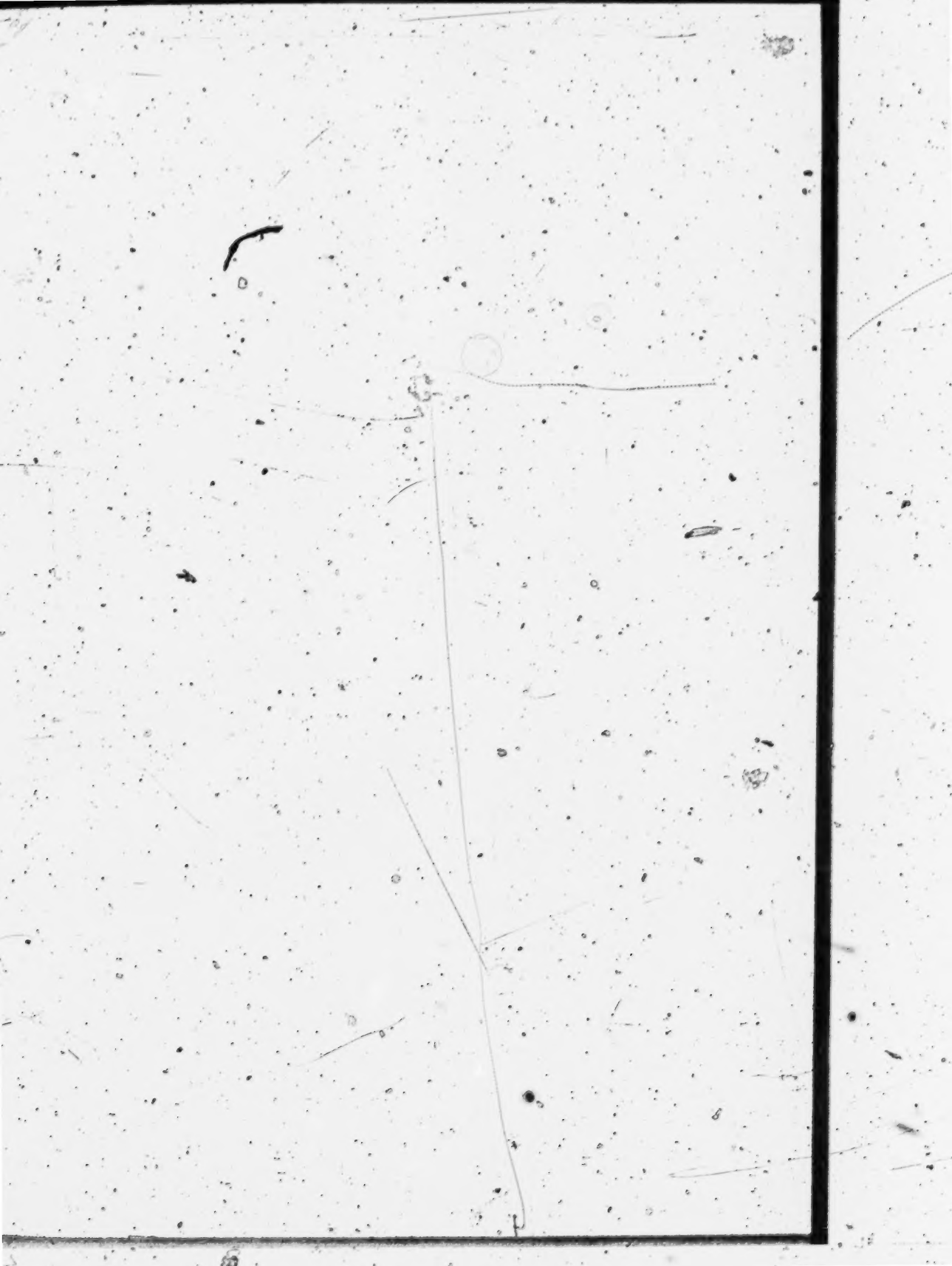
[3] 195 So. 2d 255, 256.



PREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 20 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 1147

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida,
Appellant,
vs.
THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida Corporation,
Appellee.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS

Chester Bedell
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 1147

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida,
Appellant,
vs.
THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida Corporation,
Appellee.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS

The appellee moves the Court to dismiss the appeal on the grounds that the judgment of the Supreme Court of Florida rests on an adequate non-federal basis and that the appeal does not present a substantial federal question.

Statement of the Case

The appellee, Good Samaritan Hospital Association (hereinafter called Good Samaritan), was organized as a corporation not for profit in 1916 (Appellant's Appendix, p. 6a). Despite appellant's assertion that the "appellee bears very little resemblance to the good Samaritan of the gospel" (Appellant's Brief, p. 7), the appellant admitted in his brief, filed

in the District Court of Appeal for the State of Florida, Fourth District, that Good Samaritan does charitable work in excess of $200,000 annually.

Good Samaritan's application for exemption of its property from 1965 taxes was rejected by the appellee, tax assessor of the County of Palm Beach (hereinafter called tax assessor) and Good Samaritan filed suit to establish its right to the exemption (Appellant's Appendix, pp. 5a-12a).

The tax assessor now admits that Good Samaritan meets all the requirements of the Florida Statute* granting a tax exemption to hospitals and, except for an alleged policy of racial discrimination, "would otherwise be entitled to the tax exemption" (Appellant's Brief, p. 7).

Thus, as the sole justification for the denial of the tax exemption, the tax assessor alleged as an "affirmative defense" that

> ". . . plaintiff hospital has at all times material to this cause invidiously and arbitrarily denied admission to patients, solely on the basis of their being members of the Negro race, and denied the use of its hospital facilities to Negro physicians and dentists, solely on the basis of their being members of the Negro race."
>
> Appellant's Appendix, p.13a

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*F.S. 192.06(13) exempts the properties of every hospital (1) licensed by the State Board of Health, (2) owned and operated by a Florida corporation not for profit, (3) which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital, (4) and used by such hospital for hospital purposes, provided that all income of such hospital, remaining after payment of the usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, shall be used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement or expansion of its facilities.

and as justification for assessing Good Samaritan's property asserted that:

> ". . . to grant plaintiff exemption from ad valorem taxation . . . would amount to state action which deprives Negro taxpayers and citizens . . . of their property without due process of law and deprives them of equal protection of the laws, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States."
>
> Appellant's Appendix, p. 13a

Good Samaritan challenged the sufficiency of the "affirmative defense" by a motion to strike which was granted by the trial judge who, "by way of dicta," pointed out that "the question sought to be raised . . . may be moot by reason of [Good Samaritan's] recent public declaration on the subject" (Appellant's Appendix, p. 15a).

The ruling striking the affirmative defense was affirmed by the District Court of Appeal of the State of Florida, Fourth District, on the ground that the tax assessor was an officer of the State and, as such, was obligated to carry out the provisions of the state law setting forth his duties and responsibilities. Thus, the District Court reasoned the tax assessor had "no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute" (Appellant's Appendix, p. 17a).

The Supreme Court of Florida granted the tax assessor's petition for a writ of certiorari because the decision of the District Court "affect[ed] a class of state officers" (Appellant's Appendix, pp. 18a-19a). The Court affirmed the decision of the District Court and ruled that the tax assessor's

> "plea did not controvert the validity of the statute, and that denial of the exemption for any reason other

than noncompliance with the statute would be an exercise of power in excess of that granted such officer."

Appellant's Appendix, p. 20a

Question Presented

The question presented is not whether a state can constitutionally grant a tax exemption to a not for profit corporation operating a hospital which did not, at the times material to this cause, admit Negro patients or allow Negro physicians and dentists to use its facilities, but solely

Whether the tax assessor, as an officer of the State, has standing to impose as a condition to allowing a statutory tax exemption of hospital property, that the hospital observe a policy of racial non-discrimination.

Argument

The judgment of the Supreme Court of Florida rests on an adequate non-federal basis

The tax assessor's position in the courts of Florida was that "he, as a tax assessor, an elected constitutional official of the state, could not participate in [the] unconstitutional act" of granting a tax exemption to a segregated hospital (Appellant's Brief, p. 8). His position, however, is contrary to a well settled principle of Florida law that an officer of the State cannot decline to perform a duty imposed upon him by law on the ground that the law contravenes the Constitution. *E.g., State ex rel. Atlantic Coast Line R. Co.* v. *State Board of Equalizers* (1922), 84 Fla. 592, 94 So. 681.

The tax assessor, relying on *Green* v. *City of Pensacola* (Fla. App. 1st Dist. 1959), 108 So.2d 897, and other Florida cases, argued below, as he does here, that he came within an exception to the above rule which permits a public officer

to question the constitutional validity of a statute affecting his lawful duties regarding the control and disbursement of public funds. Both the District Court of Appeal and the Supreme Court of Florida rejected that argument, holding that as a matter of Florida law the tax assessor had "no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute" and to take unto himself to do so "would be an exercise of power in excess of that granted such officer." (Appellant's Appendix, pp. 17a, 20a)

The appeal does not present a substantial federal question

The Supreme Court of Florida, having disposed of the case on the ground that the tax assessor did not have standing under Florida law to raise his "affirmative defense," did not reach the question of whether a state can constitutionally grant a tax exemption to a not for profit corporation operating a hospital which did not admit Negro patients or allow Negro physicians and dentists to use its facilities.* Nevertheless, the granting of a tax exemption to a private hospital, without more, does not so involve or identify the State with the activities of the hospital as to make its activities "state action" prohibited by the Fourteenth Amendment.

The Florida statute granting the tax exemption does not, on its face, require, sanction, encourage or relate in any way to the matter of racial discrimination. While several decisions have recognized that a tax exemption is a relevant consideration in determining what constitutes prohibited "state action" [*Burton* v. *Wilmington Parking Authority* 1961), 365

*The District Court of Appeal further held that since the tax assessor, in his official capacity, had no standing, his affirmative defense was an attempt to plead individual civil rights and "only persons actually deprived of their individual civil rights can seek redress of such rights" (Appellant's Appendix, p. 18a).

U.S. 715; *Eaton* v. *Grubbs* (4th Cir. 1964), 329 F.2d 710; *Commonwealth of Pennsylvania* v. *Brown* (E.D. Penn. 1967), 270 F.Supp. 782], no case has held or suggested that a tax exemption, by itself, imposes upon the recipient the restrictions of the Fourteenth Amendment. Just as the granting of a tax exemption to churches does not constitute the "establishment" of religion [*Murray* v. *Comptroller of Treasury* (1966), 241 Md. 383, 216 A.2d 897, *cert. denied*, 385 U.S. 816], so the granting of a tax exemption to hospitals does not constitute "state action" prohibited by the Fourteenth Amendment.

Assuming, however, that the granting of a tax exemption does amount to "state action," the appropriate relief is not to deny the exemption but rather to require an end to the discrimination. *Goldstein* v. *Mills* (S. Ct. 1945), 57 N.Y.S.2d 810, *affirmed*, (App. Div. 1946), 62 N.Y.S. 2d 619. And, an action to end the discrimination could not be maintained by the tax assessor since he is not a member of the class subject to the discrimination. *Bailey* v. *Patterson* (1962), 369 U.S. 31. *Eaton* v. *Grubbs* (4th Cir. 1964), 329 F.2d 710 and *Simkins* v. *Moses H. Cone Memorial Hospital* (4th Cir. 1963), 323 F.2d 959, were actions by Negro physicians and their patients who had been denied use of hospital facilities and the relief sought was an end to the discrimination.

Conclusion

For the foregoing reasons, the appeal should be dismissed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 1147

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida, *Appellant*

v.

THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a Non-profit Florida Corporation, *Appellee*

BRIEF OF APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

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BRIEF OF APPELLANT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

Appellee feels constrained to reply to appellant's motion to dismiss primarily because it would not want this Court to be misled by the following paragraph, found on page 3 of said motion to dismiss.

> "Good Samaritan challenged the sufficiency of the 'affirmative defense' by a motion to strike which was granted by the trial judge who, 'by way of dicta,' pointed out that 'the question sought to be raised . . . may be moot by reason of [Good Samaritan's] recent public declaration on the subject."

Appellant is sure that appellee does not mean this Court to infer that Good Samaritan is not now practicing racial segregation, or that its policy of racial

segregation has been done away with since the suit was filed. Out of an abundance of caution, however, appellant states to this Court that any such inference would be erroneous.

Even if appellee's policy had changed, however, the case would not be moot. The issue remains whether a state officer could at the time covered by the suit grant a tax exemption to an institution practicing racial segregation. Recognizing that this is the issue, appellant respectfully calls to the attention of the Court two additional cases not discussed in its jurisdictional statement, namely:

(1) *Reitman* v. *Mulkey,* 387 U.S. 369 (1967).

(2) *Commonwealth of Pennsylvania, et al.* v. *Brown et al.,* F 2d (3rd Cir.) decided March 7, 1968 and as yet unreported in the advance sheets.

In *Reitman* one of the prime considerations in finding an act to be unconstitutional was that it "significantly encourage[d] and involve[d] the State in private discriminations." [18 L. Ed. 2d at 838]. It is difficult to conceive of what would encourage appellee more to continue its policy of racial discrimination than the continuance of a very substantial tax exemption. It should be remembered too, it is respectfully submitted, that the involvement of the State in the instant case is twofold. The appellant tax assessor is an officer of the state who will be granting the exemption, albeit under compulsion. That compulsion, in turn, comes from the Supreme Court of Florida, thus bringing into this case the principles expounded in *Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

In *Pennsylvania* v. *Brown,* supra, Judge Van Dusen, in his concurring opinion, points out that in that case,

"The State action that continues today . . . is the 'encouragement' of discrimination . . ." (Pages 15 and 16 of the slip opinion). In the same case Judge Kalodner said in his concurring opinion:

> "Applying the principles [of Reitman v. Mulkey] to the instant case, I am of the opinion that the Orphans' Court 'significantly involved itself with invidious discriminations' when it removed the Board of Directors of City Trusts and appointed individual trustees of the Estate of Stephen Girard for the express purpose of effectuating the racial exclusionary clause in Girard's Will, and thereby brought itself within the ambit of the *Shelby* doctrine."

So, too, in the present case, where the highest court of Florida has ordered appellant to grant a tax exemption to an institution practicing racial segregation, the state is involved significantly and the federal issues raised are substantial indeed.

The very brief Motion to Dismiss filed by Appellee rests on two bases. The first is that the judgment of the Supreme Court of Florida rests on an adequate non-federal basis, namely, that appellant lacked standing to raise the constitutional issue framed by the stricken affirmative defense. State cases are cited by appellee to support this position of appellee. It is respectfully submitted that the cases cited by appellee are not controlling on the Supreme Court of the United States, which, after all, does have the final judicial responsibility to decide questions involving the United States Constitution. Appellant believes it is unconstitutional:

> (1) for the Courts of Florida to order him to grant a tax exemption to an institution practicing racial discrimination; and

(2) for him, as an officer of the state, to grant such a tax exemption, whether ordered to do so by the Court or not.

Appellee's argument that only a Negro has standing to raise these constitutional questions ignores the fact that it is appellant, a constitutional officer of the state, whose duty it is to grant or deny tax exemptions. It is he who seeks recourse from this Court so that *he* will not be under state compulsion to perform an unconstitutional act.

The second basis of appellee's motion to dismiss is that the appeal does not present a substantial federal question. Appellant tends to agree that the question presented has been long settled by principles enunciated in the decisions of this Court. The problem is that the Supreme Court of Florida decided the case contrary to established constitutional principles rather than in conformity with them. A substantial federal question is presented for that reason. In addition, the *precise* question presented by this appeal is both novel and important. Can a state subsidize an institution practicing racial segregation? The answer may be clear, but it is hardly unimportant or lacking in substance.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

MAXWELL, AS TAX ASSESSOR OF PALM BEACH COUNTY, FLORIDA *v.* GOOD SAMARITAN HOSPITAL ASSOCIATION, INC.

APPEAL FROM THE SUPREME COURT OF FLORIDA.

No. 1147. Decided June 17, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of a properly presented federal question.

MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE FORTAS are of the opinion that probable jurisdiction should be noted and the case set for oral argument.